

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA and
STATE OF CONNECTICUT,

Plaintiffs,

v.

THE METROPOLITAN DISTRICT
OF HARTFORD, CONNECTICUT

Defendant.

CIVIL ACTION NO.

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Appendix A Guide for Evaluating Capacity, Management, Operation, and Maintenance
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CONSENT DECREE

WHEREAS, The Metropolitan District of Hartford, Connecticut ("MDC" or "Defendant") discharges pollutants into waters of the United States from Sanitary Sewer Overflow outfalls without authorization under any National Pollutant Discharge Elimination System ("NPDES") Permit; and

WHEREAS, the plaintiffs, United States of America, on behalf of the United States Environmental Protection Agency ("EPA") and the State of Connecticut ("State") have filed complaints ("Complaints") simultaneously herewith, alleging that the MDC has violated Section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. § 1311(a); and

WHEREAS, the Parties agree, without adjudication or admission of facts or law, that settlement of this matter is in the public interest and that entry of this Consent Decree without further litigation is an appropriate resolution of the dispute, and the Parties consent to the entry of this Consent Decree;

NOW, THEREFORE, it is hereby ordered, adjudged, and decreed as follows:

I. STATEMENT OF CLAIM

A. The Complaints filed in this action state claims upon which relief can be granted against the Defendant pursuant to Section 309 of the CWA, 33 U.S.C. § 1319. The State's Complaint also states claims upon which relief can be granted pursuant to applicable State law.

II. JURISDICTION AND VENUE

A. This Court has jurisdiction over the subject matter of this action pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1331, 1345, and 1355. This Court has personal jurisdiction over the Parties to this Consent Decree. Venue properly lies in this district pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), 28 U.S.C. §§ 1391(b) and (c), and 28 U.S.C. § 1395. The MDC waives all objections it might have raised to such jurisdiction or venue.

III. BINDING EFFECT

A. The provisions of this Consent Decree shall apply to, and be binding on, the MDC, its officers, directors, employees, agents, servants, successors and assigns, and all persons, firms and corporations in active concert or participation with the MDC or its officers, directors, agents, employees, successors and assigns, and upon the United States and the State.

B. Effective from the Date of Entry of this Consent Decree until its termination, the MDC shall give written notice of this Consent Decree to any person or entity to whom the MDC transfers ownership or operation of its wastewater treatment facilities, its Sanitary Collection System or any other portion of its wastewater treatment facilities or Sanitary Collection System and shall provide a copy of this Consent Decree to any such person or entity. The MDC shall

notify EPA and the United States Department of Justice in writing of any successor in interest at least 30 days prior to any such transfer. Any sale or transfer of the MDC's interests in or operating role with respect to the MDC's wastewater treatment facilities or Sanitary Collection System shall not in any manner relieve the MDC of its responsibilities in meeting the terms and conditions of this Consent Decree.

C. The MDC shall provide a copy of this Consent Decree to each engineering and consulting and contracting firm that is retained to perform the work or any portion thereof required by this Consent Decree upon execution of any contract relating to such work, and shall provide a copy to each engineering and consulting and contracting firm already retained no later than 30 days after the Date of Entry of this Consent Decree. Any action taken by any contractor or consultant retained by the MDC to implement the MDC's duties under this Consent Decree shall be considered an action of the MDC for purposes of determining compliance with this Consent Decree. In an action to enforce this Consent Decree, the MDC shall not assert as a defense against an action by EPA or the State any act or failure to act by any of its officers, directors, employees, agents, servants, consultants, engineering firms, contractors, successors and assigns. However, the MDC retains any rights it may have against such officers, directors, employees, agents, servants, consultants, engineering firms, contractors, successors and assigns.

IV. PURPOSE

A. It is the express purpose of the Parties in entering into this Consent Decree to have the MDC take all measures necessary to fulfill the objectives of the CWA and to achieve and maintain compliance with the CWA, including the regulations promulgated thereunder, Connecticut water pollution control laws, the regulations promulgated under such laws, the

MDC's NPDES permits, any NPDES permits that may be issued to the MDC in the future, and to eliminate all SSOs from its Sanitary Collection System.

B. Engineering designs and analyses required to be performed pursuant to this Consent Decree shall be conducted using sound engineering practices, and, as applicable, consistent with: (a) EPA's Handbook: Sewer System Infrastructure Analysis and Rehabilitation, EPA/625/6-91/030, Oct. 1991; (b) EPA's Handbook for Sewer System Evaluation and Rehabilitation, EPA 430/9-75-021, Dec. 1975; (c) Existing Sewer Evaluation and Rehabilitation, WEF MOP FD-6, 1994; (d) A Guide to Short Term Flow Surveys of Sewer Systems, WRc Engineering (Undated); (e) the National Association of Sewer Service Companies (NASSCO) "Manual of Practice"; and, (f) the currently effective edition of "TR 16: Guides for the Design of Wastewater Treatment Works."

V. DEFINITIONS

A. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in the CWA or in regulations promulgated under the CWA shall have the meaning ascribed to them in the CWA or in the regulations promulgated thereunder. Whenever the terms listed below are used in this Consent Decree, the following definitions shall apply:

1. "Building/Private Property Backup" shall mean any release of wastewater from the MDC's Sanitary Sewer System into buildings or onto private property, except a release that: (1) is the result of blockages, flow conditions, or malfunctions of a building lateral or other piping/conveyance system that is not owned or operationally controlled by the MDC, or (2) is the result of overland, surface flooding not emanating from the MDC's Sanitary Sewer System.

2. "Calendar Quarter" shall mean a three-month period ending on March 31st,

June 30th, September 30th, or December 31st.

3. “Capacity-Related SSO” shall mean any discharge or release from any part of the MDC’s Sanitary Collection System, not including the combined sewer areas in Hartford and West Hartford, that is the result of the inability of that portion of the Sanitary Collection System or portions of the Sanitary Collection System downstream of that portion, to convey peak flows to a treatment plant when operating as designed.

4. “Collection System” shall mean the sewage collection and transmission system (including all pipes, Force Mains, gravity sewer lines, lift stations, Pumping Stations, manholes, and appurtenances thereto) owned or operated by the MDC and designed to convey wastewater to any wastewater treatment facility (“WWTF”) or to one or more points of discharge.

5. “Consent Decree” or “Decree” shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Decree and any appendix, this Decree shall control.

6. “Date of Entry” shall mean the date this Consent Decree is approved and signed by a United States District Court Judge for the District of Connecticut.

7. “Date of Lodging” shall mean the date this Consent Decree is filed for lodging with the Clerk of the Court for the United States District Court for the District of Connecticut.

8. The terms “day” or “days” as used herein shall mean a calendar day or calendar days. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, federal or state holiday, the period shall run until the close of

the next business day.

9. "Excessive Inflow/Infiltration" or "Excessive I/I" shall mean the Infiltration/Inflow ("I/I") that can be cost-effectively eliminated as determined by a cost-effectiveness analysis that compares the costs of eliminating the I/I with the total costs for transportation and treatment of the I/I (including capital costs of increasing sewage facilities capacity and treatment and its resulting operating costs).

10. "Flow" shall mean all wastewaters conveyed by any portion of the Collection System.

11. "Force Main" shall mean any pipe that receives and conveys, under pressure, wastewater from the discharge side of a pump. A Force Main is intended to convey wastewater under pressure.

12. "Infiltration" shall mean water that enters a sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes.

13. "Inflow" shall mean water that enters a sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm waters, surface runoff, street wash waters, or drainage.

14. "Inflow/Infiltration" ("I/I") shall mean the total quantity of water from Inflow, Infiltration, and Rainfall-Induced Infiltration without distinguishing the source.

15. "Minisystem" shall mean a subsystem of the Sanitary Collection System in

which a key manhole located at the outlet of the subsystem can be used to measure the I/I that occurs within the subsystem.

16. "Parties" shall mean EPA, the State of Connecticut, and the MDC.

17. "Pumping Station" shall mean facilities comprised of pumps that lift wastewater to a higher hydraulic elevation, including all related electrical, mechanical, and structural systems necessary to the operation of that Pumping Station.

18. "Rainfall-Induced Infiltration" ("RII") is Infiltration that behaves similarly to Inflow. Like Inflow, RII occurs as a result of rainfall. RII is the result of rainfall percolating through the soils into defects in collection systems which generally lie near the surface.

19. "Sanitary Collection System" shall mean the separate wastewater collection, storage, and transmission system (including all pipes, Force Mains, gravity sewer lines, lift stations, Pumping Stations, manholes, and appurtenances thereto) intended to carry only sewage from residences, commercial buildings, industrial buildings and institutions, which is owned or operated by the MDC.

20. "Sanitary Sewer Overflow," "SSO," and "Overflow" shall mean an overflow, spill, diversion, or release of wastewater from, or caused by, the MDC's Sanitary Collection System. This term shall include discharges to waters of the State or United States from the MDC's Sanitary Collection System, as well as any release of wastewater from the MDC's Sanitary Collection System to public or private property that does not reach waters of the United States or the State, including Building/Private Property Backups.

21. "Sewershed" shall mean a major portion of the Sanitary Collection System that drains to one, or a limited number of, major sewers.

22. "Structural SSO Outfalls" shall mean those SSO outfalls at the following locations:

- the Hartford Avenue Siphon Overflow Chamber in Newington
- the Goff Brook Overflow Chamber in Rocky Hill
- the Church Street Overflow in Wethersfield
- the Elm Street Overflow Chamber in Wethersfield
- the Hillcrest Overflow Chamber in West Hartford
- the Center Trunk Overflow to Trout Brook (CTS-2) in West Hartford
- the Center Trunk Overflow at Talcott Street (CTS-3) in West Hartford
- the Windsor Interceptor Overflow Chamber (NM-1) in Hartford.

23. "Surface Waters" shall mean waters of the State and United States as defined by 40 C.F.R. § 122.2.

24. The phrase "approval by EPA and CTDEP," shall mean the MDC's receipt of one joint, written approval document from both EPA and the Connecticut Department of Environmental Protection ("CTDEP"), or a written approval from each, EPA and CTDEP.

VI. SUBMISSIONS REQUIRING REVIEW AND APPROVAL BY EPA AND CTDEP

A. EPA /CTDEP Review

After review of any plan, report or other item that the MDC is required to submit to EPA and CTDEP for approval pursuant to this Consent Decree, EPA and CTDEP shall: (a) approve the submission, in whole or in part; (b) approve the submission with specified conditions; (c) disapprove, in whole or in part, the submission, directing the MDC to modify the submission; or (d) any combination of the above. If EPA or CTDEP disapproves the submission, in whole or in

part, EPA or CTDEP shall notify the MDC in writing of those portions of the submission that EPA or CTDEP disapproves.

B. **The MDC's Obligations upon EPA and CTDEP Approval**

In the event of approval, or approval with conditions by EPA and CTDEP, the MDC shall proceed to take any action required by the plan, report or other item as approved by EPA and CTDEP.

C. **The MDC's Obligations upon EPA or CTDEP Disapproval**

Upon receipt of notice of disapproval pursuant to Sub-Section VI.A above, the MDC shall, within 45 days correct the deficiencies in the plan, report or other item and resubmit the plan, report or other item for approval. Notwithstanding the receipt of a disapproval notice pursuant to Sub-Section VI.A above, the MDC shall proceed, at the direction of EPA or CTDEP, to take any action required by any non-deficient portion of the submission.

D. **Procedures for Resubmitted Plans**

In the event that EPA or CTDEP disapproves a resubmitted plan, report or other item, or portion thereof, EPA or CTDEP may again require the MDC to correct the deficiencies within 30 days or EPA or CTDEP may modify the submittal. The MDC shall, within 15 days, either accept the decision of EPA or CTDEP to modify the submittal or initiate the dispute resolution provisions of this Consent Decree, starting with petitioning the Court pursuant to Section XV (Dispute Resolution). If the Court upholds EPA's or CTDEP's modification or disapproval, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required.

E. **Enforceability of Modifications**

All plans, reports, and other items required to be submitted to EPA and CTDEP under this Consent Decree shall, upon approval or modification by EPA and CTDEP, be enforceable under this Consent Decree. In the event EPA and CTDEP approves or modifies a portion of a plan, report or other item required to be submitted to EPA and CTDEP under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

VII. **CWA REMEDIAL MEASURES**

A. **Capacity, Management, Operation and Maintenance (CMOM) Program**

Within 180 days of the Date of Entry, the MDC shall submit to EPA and CTDEP for approval, a CMOM Program Self-Assessment of its Collection System maintenance programs, in accordance with the attached guidance document in Appendix A to ensure that the MDC has a CMOM Program in place that is effective at eliminating SSOs from the Collection System. The CMOM Program Self-Assessment shall be accompanied by a CMOM Corrective Action Plan to address any deficiencies noted during the CMOM Program Self-Assessment and a schedule for its implementation (the "CMOM Program Corrective Action Schedule"). Upon EPA's and CTDEP's approval of the CMOM Program Self-Assessment and CMOM Program Corrective Action Plan, the MDC shall implement the corrective actions in accordance with the CMOM Program Corrective Action Schedule whereupon the MDC shall continuously implement its modified CMOM Program.

B. **Long-Term Preventative Maintenance Program**

Within 180 days of the Date of Entry, the MDC shall submit to EPA and CTDEP for approval, a plan for a Long-Term Preventative Maintenance Program ("the Preventative

Maintenance Program”) that incorporates the findings of the CMOM Program (Self-Assessment and Corrective Action Plan). The Preventative Maintenance Program shall include, but need not be limited to, the following:

1. Physical inspection and testing procedures to be used to routinely inspect and maintain the MDC’s Collection System including, but not limited to, all Pumping Stations, Force Mains, siphons, emergency generators, alarms, telemetry equipment, interceptor and lateral sewers, and to be used to identify and correct any structural, electrical, mechanical, or operational problems that may result in SSOs;
2. Preventative and routine maintenance schedules and procedures, including, but not limited to, specific maintenance plans for those areas of the Collection System prone to vandalism, electrical or mechanical failures, grease and silt deposits and root penetration, as well as those areas that have been the source of SSOs in the past;
3. A tracking system for all maintenance activities, including, at a minimum, the use of Collection System maintenance software designed to catalog the maintenance history of the Collection System and to plan and schedule future Collection System maintenance activities;
4. Staffing, organization, and resource commitments;
5. A plan and schedule for priority and routine maintenance cleaning of the Collection System to maintain the Collection System’s capacity, to prevent Collection System blockages, to prevent Building/Private Property Backups, and to prevent SSOs;
6. A description of all activities, including procedures, equipment, resources to be used and the frequency of the activity;

7. A proposed budget for implementation of the Preventative Maintenance Program; and
8. A five-year preventative maintenance expenditure plan for the Collection System.

The MDC shall implement the Preventative Maintenance Program upon approval or conditional approval by EPA and CTDEP.

C. **Hydraulic Model and Model Report**

Within 270 days of the Date of Entry, the MDC shall develop a model(s) (the "Model") and submit to EPA and CT DEP a Modeling Report of the MDC's Sanitary Collection System using a hydraulic modeling software package. This Model shall evaluate portions of the Sanitary Collection System that include the contiguous interceptor sewers, 12-inch and greater, that are within the limits, both upstream and downstream, of all Structural SSO Outfalls. Isolated surcharges shall be addressed under the Sewer System Evaluation Survey that will be prepared pursuant to Section VII.H of this Decree. The MDC shall use the Model to: 1) assess the hydraulic capacity of each Sewershed that is tributary to, or which contributes to, a Capacity-Related SSO including all Structural SSO Outfalls identified in Sub-Section V.A.22; 2) identify the appropriate remedial measures to address all capacity limitations identified in the Sanitary Collection System; and, 3) provide a detailed understanding of the response of its Sanitary Collection System to wet-weather events and an evaluation of the impacts of the proposed remedial measures and removal of extraneous flows.

1. The MDC shall configure the Model to accurately represent each of the MDC's Sewersheds that is tributary to, or which contributes to, Capacity-Related SSOs in

accordance with currently accepted engineering practice. The MDC may model its Sanitary Collection System in different levels of detail and with different types of models, as necessary, to identify the causes of all known Overflows and to assess proposed remedial measures to eliminate those Overflows.

2. The MDC shall configure the Model using adequate, accurate, and sufficiently current physical data (including, but not limited to invert and ground elevations, pipe diameters, slopes, pipe run lengths, Manning roughness factors, manhole sizes and configurations, and Pumping Station performance factors) for its Sanitary Collection System. In particular, the MDC shall sufficiently field verify physical data to allow calibration and verification of the Model.

3. The MDC shall calibrate and verify the Model using appropriate rainfall data, actual hydrographs and Sanitary Collection System flow data. The MDC shall use an approved data set(s) for calibration and verification. As part of the calibration process, the MDC shall either use existing sensitivity analyses for the selected Model, or carry out its own sensitivity analyses, such that calibration effectiveness is maximized.

4. The Hydraulic Modeling Report submitted pursuant to this Section shall include the following:

- a. a description of the Model;
- b. specific attributes, characteristics, and limitations of the Hydraulic Model;
- c. identification of all input parameters, constants, assumed values, and expected outputs;

d. digitized map(s) and schematics that identify and characterize the portions (including the specific gravity sewer lines) of the Sanitary Collection System that shall be included in the Model;

e. identification of input data to be used;

f. configuration of the Model;

g. procedures and protocols for performance of sensitivity analyses (i.e., how the Model responds to changes in input parameters and variables);

h. procedures for calibrating the Model to account for values representative of the Sanitary Collection System actual system data (e.g., flow data); and

i. procedures to verify the Model's performance using additional, independent actual system and WWTF data (e.g., flow data).

D. Sanitary Collection System Capacity Assessment

Within 180 days of EPA and CTDEP approval of the Modeling Report, the MDC shall submit to EPA and CTDEP a professional engineering evaluation of the conveyance capacity of all Sewersheds that are tributary to, or contribute to, Capacity-Related SSOs (the "Capacity Assessment"). The Capacity Assessment shall utilize the Model developed pursuant to Sub-Section VII.C and shall include an evaluation of all interceptor sewers, Pumping Stations, Force Mains and siphons, known areas of Sanitary Collection System surcharges, known Overflow points and areas with known Building/Private Property Backups, and any other portions of the Sanitary Collection System that must be assessed so as to allow for a technically-sound evaluation of the causes of all SSOs. It shall also:

1. identify, at a minimum, the hydraulic capacities of the portions of the

Sanitary Collection System upstream and downstream of all Capacity-Related SSOs, and compare those capacities to existing and future projected wet-weather flows. The Capacity Assessment shall identify, within the aforementioned portions of the MDC's Sanitary Collection System, those portions of the Sanitary Collection System that have caused, or are expected to cause or contribute to, Capacity-Related SSOs, and/or Building/Private Property Backups under existing and future peak wet-weather flows, and the degree to which those portions experience or cause, under current or projected future conditions, Capacity-Related SSOs;

2. consider local rainfall data and the impact of an appropriate range of rainfall events, based on return frequency and duration, on peak wet-weather flows within those portions of the MDC's Sanitary Collection System that are tributary to, or contribute to, all Capacity-Related SSOs;

3. characterize the Sanitary Collection System performance by identifying, for each condition considered, each pipe segment operating in surcharged condition, each manhole or structure at which an SSO might be expected to occur; and

4. include a breakdown of the length, size and cost of the facilities that are required to eliminate each Capacity-Related SSO assuming various levels of extraneous flow removal. The analyses shall also include a map noting the location of any potential relief or replacement sewers and size of all downstream interceptors and Pumping Stations.

E. **Assessment of Voluntary I/I Removal Incentive Programs**

Within 180 days of the Date of Entry of the Consent Decree, the MDC shall submit to EPA and CTDEP a report assessing the participation rates and effectiveness of the MDC's voluntary private Inflow source removal program ("Voluntary Private Inflow Source Removal

Program Assessment"). The Voluntary Private Inflow Source Removal Program Assessment shall note each instance in which a voluntary removal occurred, summarize the work that was performed, and include an estimate of the cost of the work. It shall also describe the results of any follow-up inspections and post-removal flow monitoring conducted by the MDC to assess the effectiveness of the Voluntary Private Inflow Source Removal Program. The MDC shall canvass a representative sample of property owners that did not participate in the program to determine why they did not participate in the program and describe the results of this survey.

F. Implementation of Prior I/I Remediation Recommendations

Within 120 days of the Date of Entry of the Consent Decree, the MDC shall review the recommendations contained in prior I/I flow investigation reports since January 1, 1995, which were conducted in any Sewershed that is tributary to, or contributes to, a Capacity-Related SSO and shall submit to EPA and CT DEP for approval a consolidated plan (the "Initial Extraneous Flow Remedial Plan"), which includes a schedule for implementation of each of the remaining report recommendations (the "Initial Extraneous Flow Remedial Plan Implementation Schedule"). If the MDC does not plan to implement a specific recommendation of a report, the Initial Extraneous Flow Remedial Plan must provide the rationale for the decision not to implement the recommendation. Upon EPA's and CT DEP's approval of the Initial Extraneous Flow Remedial Plan, the MDC shall implement the Initial Extraneous Flow Remedial Plan in accordance with the Initial Extraneous Flow Remedial Plan Implementation Schedule.

G. Additional Extraneous Flow Investigations

Within 120 days of the Date of Entry of the Consent Decree, the MDC shall submit to EPA and CTDEP a report delineating the results of the additional I/I investigations that are

necessary to identify and quantify those sources of extraneous flow within the Sewersheds that are tributary to, or contribute to, all Capacity-Related SSOs (the "Additional Extraneous Flow Investigations Report"). The Additional Extraneous Flow Investigations Report(s) shall include separate sections describing the Sewersheds that are tributary to, or contribute to, a Capacity-Related SSO, and shall:

1. Include the MDC's rationale for excluding additional I/I investigations in any portion of any Sewershed that is tributary to, or contributes to, a Capacity-Related SSO;
2. Quantify groundwater and Rainfall-Induced Infiltration and the Inflow components of extraneous flow during periods of high groundwater for each Sewershed;
3. Identify and quantify the level of peak Rainfall-Induced Infiltration by evaluating continuous flow monitoring records for the period beginning no earlier than 12 hours after the end of a 1.00" or greater storm event measured during a 24-hour period, and ending no later than 24 hours following the same event;
4. Include the following information for each Sewershed:
 - a. a map of the Sewershed that delineates all minisystems, streets, water courses, the location of all key manholes where the MDC conducted flow monitoring during the investigations, all major branch, trunk, and interceptor sewers, siphons, Pumping Stations, Force Mains, Overflow points, and wastewater treatment facilities. The map(s) must also differentiate Force Mains from gravity sewers, provide the direction of flow and indicate the size of all interceptor sewers. The boundaries of each minisystem being investigated must be indicated;
 - b. an evaluation of the ability of the Sewershed to convey current and

expected flows to the tributary wastewater treatment facilities; and,

c. recommendations for additional investigations of those minisystems determined to contain Excessive I/I, including, but not limited to, identification and quantification of both public and private sources of groundwater Infiltration and Rainfall-Induced Infiltration and Inflow. The recommendations and schedule for the implementation of the additional investigations shall form the basis of the Sewer System Evaluation Survey Scope of Work ("the SSES SOW") and the SSES Implementation Schedule for each Sewershed, which shall constitute a separate section within the Additional Extraneous Flow Investigations Report.

H. **Submission of Sewer System Evaluation Survey Report**

Upon approval by EPA and CTDEP of the Additional Extraneous Flow Investigations Report, the MDC shall implement the SSES SOW in accordance with the SSES Implementation Schedule including, but not limited to, submittal of a Sewer System Evaluation Survey Report (the "SSES Report") to EPA and CT DEP for approval.

I. **Contents of SSES Report**

The SSES Report shall be organized into separate sections, corresponding to those presented in the "Additional Extraneous Flow Investigations Report," which include the Sewersheds that are tributary to, or contribute to, a Capacity-Related SSO. In addition to identifying those sources of extraneous flow that are cost effective to remove, it shall also itemize the specific measures that must be implemented to eliminate each Capacity-Related SSO and include a schedule for the implementation of the required measures. It shall include, but shall not be limited to, the following information:

Infiltration/Inflow - Public Sources

1. A listing of all public sources of I/I identified during the SSES in the Sewersheds that are tributary to, or contribute to, any Capacity-Related SSOs;
2. A listing of all public sources of I/I that were determined to be excessive in the Sewersheds that are tributary to, or contribute to, any Capacity-Related SSOs;
3. Cost-effectiveness analyses that determine which public sources of I/I are more cost-effective to remediate than to transport and treat, and a narrative description of the bases of the analyses;
4. Proposals for rehabilitating or replacing each deficient component of the Sewershed identified during the SSES, and a schedule for implementing the recommended rehabilitation/replacement measures, including engineering design and construction;
5. Proposals for rehabilitating each public source of Excessive I/I in the Sewersheds that contribute to any Capacity-Related SSOs, and a schedule for implementing the proposals, including engineering design and construction;

Infiltration/Inflow - Private Sources

6. A listing of all private sources of I/I identified during the SSES in the Sewersheds that contribute to any Capacity-Related SSOs;
7. A listing of all private sources of I/I that were determined to be excessive in Sewersheds that contribute to any Capacity-Related SSOs;
8. Identification of each minisystem in the Sewersheds that are tributary to, or contribute to any Capacity-Related SSO in which excessive Inflow or Rainfall-Induced Infiltration is determined to exist. For each minisystem in the Sewershed that is tributary to, or contributes to a Capacity-Related SSO in which excessive Inflow or Rainfall-Induced Infiltration

is determined to exist pursuant to the procedures detailed above, the SSES Report shall include, but shall not be limited to, the following information:

a. a summary of the results of the building surveys conducted by the MDC, or agents of the MDC, including an address listing of those buildings that have been surveyed, an address listing of those buildings with identified sources of Inflow and Rainfall-Induced Infiltration, and a listing of those addresses where Inflow and Rainfall-Induced Infiltration sources are recommended to be rehabilitated and the recommended methods of rehabilitation;

b. a plan and schedule for surveying those buildings that have not been previously surveyed;

c. a map of each Sewershed that delineates the location of all properties within the Sewershed and identifies each property that is an actual or potential source of extraneous flow to the Sanitary Collection System that was identified during the SSES as well as any of the MDC's prior investigations. The map shall note the properties where private sources of Inflow and Rainfall-Induced Infiltration have been determined to be excessive, as well as the extent of each member community's storm water collection system in areas of excessive Inflow and Rainfall-Induced Infiltration. It shall also note those properties that availed themselves of the MDC's Voluntary Private Property Extraneous Flow Removal Program, the type of remedial measure that was implemented and shall identify those properties that the MDC has yet to inspect due to refused entry or lack of response;

d. a determination of whether it is cost-effective to redirect identified private sources of extraneous Inflow or Rainfall-Induced Infiltration or to expand the Sanitary

Collection System to convey the extraneous flow to the tributary wastewater treatment facility.

The analysis shall include, but shall not be limited to:

(1) a generalized/schematic level assessment of whether conditions permit redirection of the identified sources to the ground and the range of homeowner costs associated with this type of remedial measure;

(2) an assessment of whether the storm sewer system(s) has sufficient capacity and can be extended to eliminate the identified sources and the range of homeowner costs associated with this type of remedial measure, including, but not limited to the costs of redirecting extraneous flow sources to a storm sewer system;

(3) an assessment of whether off-line storage within the sanitary Sewershed can be used to eliminate Capacity-Related SSOs; and

(4) an assessment of the cost of conveying the extraneous flow to the WWTF without exacerbating down-stream Overflows. Such assessment shall also assess consistency with the Long Term CSO Control Plan where appropriate.

e. recommendations regarding the disposition of each identified private source of extraneous flow that is determined to be excessive;

f. the framework of a public education plan to promote the elimination of private sources of excessive Rainfall-Induced Infiltration and Inflow and a schedule for the plan's implementation;

g. an evaluation of whether any changes in the MDC's ordinances or by-laws are necessary to implement or facilitate the planned remedial measures. If the MDC determines that any changes in the MDC's ordinances or by-laws, or ordinance(s) of member

towns, are necessary to implement or facilitate the planned remedial measures, the MDC shall submit to EPA and CTDEP a proposed schedule for implementing said MDC ordinances or by-laws, and the MDC shall notify the member towns in writing of the changes requested of their ordinances; and,

h. a schedule to implement the private extraneous source reduction recommendations of the SSES (the “SSES Private Source Remediation Schedule”) including an implementation plan; and,

9. If the conclusion of the SSES is that it is more cost-effective to allow individual sources of extraneous flow to remain in the Sanitary Collection System rather than to redirect the sources or to implement other sewer system rehabilitation measures, the SSES shall include a separate section that describes the recommended measures that must be implemented to expand the existing Sanitary Collection System to eliminate Structural SSO Outfalls and a schedule for their implementation.

J. **SSES Report Implementation Schedule**

Upon EPA’s and CTDEP’s approval of the SSES Report, the MDC shall implement the recommendations of the SSES Report in accordance with the schedules included in the SSES Report, as amended by EPA or CTDEP.

K. **Elimination of Discharges from Structural SSO Outfalls**

1. **Windsor, Wethersfield, and Rocky Hill.** All Structural SSO outfall discharges from the MDC’s Collection System serving Windsor, Wethersfield and Rocky Hill (i.e., Elm Street Overflow Chamber, Church Street Overflow, Goff Brook Overflow Chamber, and Windsor Interceptor Overflow Chamber (NM-1)) shall be eliminated no later than **five years**

from the date of EPA's and CTDEP's approval of the SSES Report Implementation Schedule as required in Section VII.J.

2. **Newington and West Hartford.** All Structural SSO outfall discharges from the MDC's Collection System serving Newington and West Hartford (i.e., Hartford Avenue Siphon Overflow Chamber, Hillcrest Overflow Chamber, Center Trunk Overflow to Trout Brook (CTS-2), and Center Trunk Overflow at Talcott Street (CTS-3)) shall be eliminated no later than **10 years** from the date of EPA's and CTDEP's approval of the SSES Report Implementation Schedule as required in Section VII.J.

3. **Newington and West Hartford Alternate Measures SSO Plan.** The MDC shall submit to EPA and CTDEP in conjunction with the Sewer System Evaluation Survey Report required pursuant to Sub-Section VII.I, an engineering report (the "Newington and West Hartford Alternate Measures SSO Plan") that evaluates the feasibility of restoring CSO S-4 to interim operation during wet-weather peak flow events until the Park River Auxiliary Conduit is operational. The Newington and West Hartford Interim Measures SSO Plan shall evaluate the interim operation of CSO S-4 as a temporary means of eliminating the Structural SSO outfall discharges from the Sanitary Collection System that serves Newington and West Hartford. The Report shall include, but shall not be limited to the following:

a. an analysis of the hydraulic impact of peak flows from the Newington Trunk Sewer and the Center Trunk Sewer on the New Southwest Branch Interceptor and connecting sub areas assuming various removal rates of public and private Infiltration and Inflow within the tributary Sewersheds.

b. an assessment of the environmental benefits and costs associated

with temporarily opening CSO S-4 versus continuing SSO discharges from the Hartford Avenue Siphon Overflow Chamber, the Hillcrest Overflow Chamber, the Center Trunk Overflow to Trout Brook and the Center Trunk Sewer Overflow at Talcott Street assuming various removal rates of public and private Infiltration and Inflow within the tributary Sewersheds.

c. recommendations regarding the temporary reopening of CSO S-4 as an alternate means of eliminating the discharges from the Structural SSO Outfalls from the Sanitary Collection System serving Newington and West Hartford and any schedules for their implementation (the "Newington and West Hartford Alternate Measures SSO Plan Implementation Schedule"). Any proposed schedules shall specifically relate to milestones established for the removal of public and private sources of Infiltration and Inflow pursuant to Sub-Section VII.J of this Consent Decree.

d. Upon EPA's and CT DEP's approval of the Newington and West Hartford Alternate Measures SSO Plan, the MDC shall implement it in accordance with the Newington and West Hartford Alternate Measures SSO Plan Implementation Schedule.

VIII. EMERGENCY RESPONSE PLAN

A. Within 120 days following the Date of Entry, the MDC shall develop an Emergency Response Plan and shall submit a copy of the plan to EPA and CTDEP for approval. The Emergency Response Plan shall be designed to ensure that, should an SSO occur, the volume of untreated wastewater discharged to the environment and the impact of the discharge on the environment and public health will be minimized. The Emergency Response Plan shall result in: 1) all SSOs being responded to and halted as rapidly as possible; 2) mitigation being employed whenever appropriate; 3) appropriate measures being implemented to prevent SSO

recurrence; and 4) appropriate measures being implemented to respond to and in preventing Building/Private Property Backups. The Emergency Response Plan shall provide procedures for responding to SSOs, including Building/Private Property Backups to minimize the environmental impact and potential human health risk of SSOs. The Emergency Response Plan shall include, at a minimum:

1. Procedures and public notice requirements to limit public access to and contact with areas affected by SSOs;
2. Procedures to provide timely notice to EPA, CTDEP, and local public health officials of SSOs;
3. Procedures to make the public aware of SSOs, including but not limited to, providing the public with a telephone number which can be used by the public to report SSOs;
4. A review to ensure that the MDC has available the equipment necessary to respond to SSOs and to implement the Emergency Response Plan;
5. Procedures to ensure the rapid dispatch of personnel and equipment to correct or repair the condition causing or contributing to any SSO;
6. Procedures to ensure the preparedness, including responsiveness training, of the MDC's employees and contractors necessary for effective implementation of the Emergency Response Plan;
7. A system to track SSO reports and other complaints and related repairs, and to investigate the causes of any SSOs;
8. Safety training for all Collection System personnel;

9. Procedures to ensure that SSOs are immediately contained, and eliminated in a timely manner;
10. Procedures, if any, to provide relief to residents experiencing Building/Private Property Backups resulting from the Sanitary Collection System;
11. Procedures for investigating and documenting the causes of Building/Private Property Backups;
12. Measures to clean up Building/Private Property Backups as required by the MDC Claims Policy regarding such backups; and,
13. Measures to eliminate Building/Private Property Backups, and in cases where measures included in Section VII (CWA Remedial Measures) will not completely eliminate the Building/Private Property Backups until some date in the future, measures to mitigate Building/Private Property Backups.

B. Within 90 days following the Date of Entry the MDC shall provide a list of all known Building/Private Property Backup incidents within the past five years. This listing shall include the date of the Building/Private Property Backup incident, the location by address, source of notification, the cause(s) of the Building/Private Property Backup and actions taken by the MDC to halt, mitigate, and prevent future incidents.

C. The MDC shall immediately and continuously implement the Emergency Response Plan upon approval or conditional approval by EPA and CTDEP.

D. As soon as practicable, but no later than two (2) hours of learning of any SSO, the MDC shall also provide an oral report to EPA by calling Michael Fedak at (617) 918-1766 and to CTDEP by calling Iliana Ayala, during regular business hours, at (860) 424-3758 or CT DEP's

Municipal Facilities Section at (860) 424-3704. If the MDC learns of an SSO at any other time than normal business hours, the MDC also shall notify EPA at the above phone number and CTDEP's Emergency Response Unit by calling (860) 424-3338. The oral report must identify the location, estimated volume and receiving water(s), if any, of the SSO(s). The MDC shall also, within 24 hours of learning of such SSO(s), send a facsimile report to EPA, to the attention of Michael Fedak, at (617) 918-1809 and to CT DEP, to the attention of Iliana Ayala at (860) 424-4067. The facsimile reports shall be submitted in the form attached as Appendix B and shall include the following information:

1. The date, time and location of the SSO, including a description of the sewer system component from which the release occurred (e.g., manhole, constructed Overflow pipe, crack in pipe);
2. The circumstances that led to the SSO;
3. The estimated volume of the SSO;
4. Whether the SSO reached navigable waters of the State or United States and, if so, the identity of the receiving waters and the estimated volume of the SSO that reached those waters;
5. Steps taken (or the steps to be taken) to mitigate the impact(s) of the SSO, including treatment of any of the discharge, and when those steps were (or will be) taken;
6. If any of the SSO was treated, the volume of the SSO treated and the volume of treated SSO that reached receiving waters;
7. The steps taken (or the steps to be taken) to eliminate and prevent reoccurrence of the SSO and when those steps were (or will be) taken; and

8. A description of the cleanup efforts taken or intended to be taken.

EPA and CTDEP will advise the MDC in writing in the event of any change in personnel to whom oral and facsimile reports should be made.

E. The reporting requirements set forth in this section do not relieve the MDC of its obligation to submit any other reports or information as required by state, federal or local law.

IX. DEMONSTRATION OF ELIMINATION OF CAPACITY-RELATED SSOs

A. Following completion of the remedial measures required by Sub-Sections VII.A-K, in accordance with the approved schedules, the MDC shall demonstrate for one year that Capacity-Related SSOs have been eliminated to EPA's and CTDEP's satisfaction.

B. If following completion of the measures required by Sub-Sections VII.A-K, the MDC experiences Capacity-Related SSOs, then the MDC shall by no later than 90 days after the triggering storm event, submit a Capacity Assurance Plan to EPA and CTDEP for approval that shall include provisions for eliminating all Capacity-Related SSOs. The Capacity Assurance Plan shall include a schedule for completing the additional measures proposed therein. After completion of the remedial projects in the Capacity Assurance Plan, the demonstration provisions of this Section shall again apply.

C. If following completion of the measures required by Sub-Sections VII.A-K, the MDC experiences SSOs that are not Capacity-Related SSOs, then the MDC shall by no later than 60 days after the non-Capacity-related discharge event, submit revisions to the CMOM Corrective Action Plan and CMOM Corrective Action Schedule (as described in Sub-Section VII.A) to EPA and CTDEP for approval that shall include provisions for preventing similar O&M-related SSOs.

X. REPORTING

A. Beginning with the first quarter following the Date of Entry of this Consent Decree and each quarter thereafter for a four-year period until termination of the Decree, the MDC shall submit on the thirtieth day of each month following the end of the quarter, a written report to EPA and CTDEP regarding the status of its compliance with Section VII (CWA Remedial Measures) of this Decree. After the four-year period, written reports shall be required semi-annually, within 30 days of June 30th and December 31st, until termination of the Decree. The report shall contain a summary of the status and progress of all projects and programs required by Section VII (CWA Remedial Measures) of this Decree, including but not limited to:

1. A summary listing of all SSOs including Building/Private Property Backups that have occurred in the past quarter. This tabular listing should be organized chronologically by municipality and Sewershed and shall include the date of the SSO or Building/Private Property Backup incident, the location by address, source of notification (e.g., property owner, field crew, etc.), and the cause(s) of the Building/Private Property Backup.
2. A description of the activities undertaken during the reporting period directed at achieving compliance with this Consent Decree. A separate listing of all public and private Infiltration/Inflow sources, organized by municipality and Sewershed, that were eliminated during the quarter, the date that they were eliminated, and the mechanism that was used to eliminate the source shall also be included in each quarterly report;
3. Identification of all plans, reports, and other deliverables required by this Consent Decree that the MDC completed and submitted during the reporting period, or failed to complete; and

4. A description of the expected activities to be taken during the next reporting period in order to achieve compliance with this Consent Decree.

B. By January 30, 2007, and every 12 months thereafter until termination of this Decree, the MDC shall submit to EPA and CTDEP an Annual Report. The last quarterly report and semi-annual report required in Sub-Section X.A may be combined with the Annual Report. The Annual Report shall contain a summary of compliance with and activities related to the projects scheduled under Section VII (CWA Remedial Measures) of this Decree and also:

1. A summary of Emergency Response Plan activities, including, but not limited to, the number of responses to Overflows and bypasses, the response times for each discharge and actions taken to clean and disinfect the discharge site.

2. A summary of the preventive maintenance activities undertaken by the MDC. This shall include information identifying the length of pipe segments that were inspected, cleaned, repaired or replaced and a summary of all Pumping Station and Force Main preventive maintenance activities for the year. Where available, maps shall be submitted documenting the information provided in the report.

3. The reporting requirements of Sub-Section X.A.

C. All reports required to be submitted in this section shall contain a certification signed by a duly authorized representative of the MDC. The certification shall read as described in Sub-Section XVII.B.

D. The reporting requirements set forth in this section do not relieve the MDC of its obligation to submit any other reports or information as required by state, federal or local law.

XI. RECORDS RETENTION

The MDC shall retain copies of all data collected and all documents and reports generated pursuant to this Decree for the pendency of this Decree.

XII. CIVIL PENALTY

A. The MDC shall pay a civil penalty in the amount of EIGHT-HUNDRED AND FIFTY THOUSAND DOLLARS (\$850,000) in satisfaction of the claim for civil penalties alleged in the United States' and the State of Connecticut's Complaints.

1. The MDC shall pay a civil penalty in satisfaction of the United States' claims in the amount of FOUR-HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS (\$425,000). The MDC shall make payment by electronic funds transfer in accordance with written instructions to be provided by the United States Attorney's Office, Financial Litigation Unit, New Haven, Connecticut. The costs of such electronic funds transfer shall be the responsibility of the MDC. The MDC shall send a copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and the transmittal letter to EPA and the United States Department of Justice as specified in Section XVII (Form of Notice). Payment of the civil penalty shall be made within 15 days after the MDC receives notice of entry of the Consent Decree. If the MDC fails to tender payment within 15 days of receiving notice of entry of this Consent Decree, then interest shall accrue on the debt to the United States, from the date of entry of this Consent Decree, at the rate provided for in 28 U.S.C. § 1961.

2. The MDC shall pay a civil penalty in satisfaction of the State of Connecticut's claims in the amount of FOUR-HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS (\$425,000). This amount shall be deposited into the "Central Connecticut Regional

SEP Account” in accordance with Conn. Gen. Stat. 22a-16a, to fund various environmental projects in the greater Hartford area as selected by CT DEP consistent with its February 15, 1996 “Policy on Supplemental Environmental Projects,” including but not limited to water quality planning, assessment and restoration, and greenway enhancements which will benefit water quality and habitat. The MDC shall make payment by electronic funds transfer to the Office of the Connecticut Attorney General, in accordance with written instructions to be provided by the Office of the Connecticut Attorney General. The costs of such electronic funds transfer shall be the responsibility of the MDC. The MDC shall send a copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and the transmittal letter to CTDEP and the Office of the Connecticut Attorney General as specified in Section XVII (Form of Notice). Payment of the civil penalty shall be made within 15 days after the MDC receives notice of entry of the Consent Decree. If the MDC fails to tender payment within 15 days of receiving notice of entry of this Consent Decree, then interest shall accrue on the debt to the State of Connecticut, from the date of entry of this Consent Decree, at the rate provided for in 28 U.S.C. § 1961.

XIII. STIPULATED PENALTIES

A. Failure to Submit Timely and Complete Documents

The MDC shall pay to the United States and the State stipulated penalties, as set forth below, for each day the MDC fails to submit and/or complete any plans, reports or other submittals required under this Decree by the specified due dates or to make the changes to those documents per EPA’s or CTDEP’s comments within the required time frames. All plans, upon submission and approval, shall be incorporated herein as part of this Decree. The stipulated

penalties for failure to meet each document submission date shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 10th day	\$500
11th to 20th day	\$1,000
21st day and beyond	\$2,000

B. Remedial Requirements

The MDC shall pay to the United States stipulated civil penalties as set forth below for each day the MDC fails to satisfy any of the remedial requirements of Section VII (CWA Remedial Measures) of this Decree. The stipulated penalties for failure to meet each such requirement shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 10th day	\$500
11th to 20th day	\$1,000
21st day and beyond	\$2,000

C. Unpermitted Discharges

For each Capacity-Related SSO, the MDC shall pay a stipulated penalty of \$5,000.

Notwithstanding the foregoing, the MDC shall not be liable for such a stipulated penalty if all of the following conditions are met: (i) The MDC stopped the discharges from the SSO outfall as soon as reasonably practicable; (ii) The MDC is in full compliance with the schedules and requirements set forth pursuant to Section VII (CWA Remedial Measures) of this Consent Decree; and, (iii) The MDC has complied with all reporting requirements related to such discharges from its SSO outfalls, including those set forth in this Consent Decree.

D. **Delay in Payment of Penalty**

The MDC shall pay to the United States and/or the State, as applicable, a stipulated penalty of \$2,000 for each day that the MDC is late in paying the civil penalty required under Section XII.

E. **All Other Violations**

The MDC shall pay a stipulated penalty of \$1,000 per violation per day for any violation of the Consent Decree that is not specified in this Section.

F. **Payment of Stipulated Penalties**

Stipulated penalties shall automatically begin to accrue on the first day the MDC fails either to meet any of the schedules of performance required by this Consent Decree or to satisfy any obligation or requirement of this Consent Decree and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity, but need not be paid except as provided in Sub-Section G below. Payment of stipulated penalties as set forth above shall be in addition to any other rights or remedies which may be available to the United States or the State by reason of the MDC's failure to comply with requirements of this Consent Decree, and any applicable federal, state or local laws, regulations, NPDES Permits and all other applicable permits.

G. **Written Demand for Payment of Stipulated Penalties**

Stipulated penalties shall be paid within 30 days of EPA's or CTDEP's written demand for payment of stipulated penalties. Stipulated penalties shall be paid to the United States and the State in accordance with the payment procedures detail above. Copies of any checks and the transmittal letters shall be sent simultaneously to U.S. DOJ, EPA, and the State.

XIV. FORCE MAJEURE

A. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes entirely beyond the control of the MDC, including its contractors and subcontractors, which delays or prevents the timely performance of any obligation under this Consent Decree notwithstanding the MDC's best efforts to avoid the delay. Stipulated penalties shall not be due for the number of days of noncompliance caused by a Force Majeure event as defined in this Section, provided that the MDC complies with the terms of this Section.

Examples of events which may constitute Force Majeure events include natural disasters, national emergencies, and delays in obtaining any required approvals or permits despite the MDC's complete and timely submission of requests for approval and applications for required permits and any supplemental information that may be requested. Examples of events that are not Force Majeure events include, but are not limited to, normal inclement weather, unanticipated or increased costs or expenses of work, the financial difficulty of the MDC to perform such work, acts or omissions attributable to the MDC's contractors or representatives, and the failure of the MDC or the MDC's contractors or representatives to make complete and timely application of any required approval or permit.

B. If any event occurs that may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, the MDC shall notify EPA and CTDEP within 48 hours after the MDC first knew or should have known that the event might cause a delay. Within five working days thereafter, the MDC shall provide to EPA and CTDEP, at the addresses specified in Section XVII (Form of Notice), a written explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated

duration of any delay, the measure(s) taken and to be taken by the MDC to prevent or minimize the delay, a proposed schedule for the implementation of such measures, and a statement as to whether, in the opinion of the MDC, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Notwithstanding the foregoing, the MDC shall notify EPA and CTDEP orally or via fax within 24 hours of becoming aware of any event which presents an imminent threat to the public health or welfare or the environment and provide written notice to EPA and CTDEP within 72 hours. Failure to give timely and complete notice in accordance with this Sub-Section shall constitute a waiver of any claim of Force Majeure with respect to the event in question.

C. If the Parties agree that a delay or anticipated delay is attributable to Force Majeure, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event shall be extended by mutual agreement of the Parties for a period of time as may be necessary to allow performance of such obligations to the extent the delay was caused by a Force Majeure event.

D. If the Parties are unable to agree as to whether a delay or anticipated delay is attributable to Force Majeure, or on the number of days of noncompliance caused by such event, the MDC may initiate the Dispute Resolution process set forth in Section XV (Dispute Resolution) below. If the MDC does not initiate the Dispute Resolution process set forth in Section XV below within 14 days of receiving written notice that EPA and CTDEP disagree as to whether a delay or anticipated delay is attributable to Force Majeure, or on the number of days of noncompliance caused by such circumstances, then the MDC shall be deemed to have waived any Force Majeure claims or any rights to initiate Dispute Resolution with regard to such claims.

E. Delay in performance of any obligation under this Consent Decree shall not automatically justify or excuse delay in complying with any subsequent obligation or requirement of this Decree.

F. Failure of the MDC to obtain any state or federal grants or loans shall not be considered a Force Majeure event under this Consent Decree.

XV. DISPUTE RESOLUTION

A. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States or the State to enforce obligations that the MDC has not disputed in accordance with this Section.

B. If the MDC objects to disapproval or conditions in an approval of a plan, report, or other item required to be submitted to EPA and CTDEP under this Consent Decree, or if the Parties are unable to agree as to whether a delay or anticipated delay is attributable to Force Majeure, or the number of days of noncompliance caused by such event, or on the amount of Stipulated Penalties due, the MDC may initiate informal, good faith negotiations between the Parties to the dispute for a period of up to 30 days from the time the MDC gives notice of the existence of the dispute to EPA and CTDEP. The period for negotiations may be extended by agreement of the Parties.

C. In the event that the Parties cannot resolve any such dispute by informal negotiations under the preceding Sub-Section, then the position advanced by EPA and CTDEP shall be considered binding unless, within 15 days of the end of the informal negotiation period,

the MDC files a petition with this Court setting forth the matter in dispute, the efforts of the Parties to resolve it, and the relief requested. EPA and/or CTDEP shall then have 30 days to respond to any such petition.

D. In proceedings on any dispute regarding a delay in performance as set forth in this Section, the MDC shall have the burden of proving: (1) that the delay or noncompliance is or was caused by a Force Majeure event, and (2) that the amount of additional time requested is necessary to compensate for that event. In no event shall the time for performance be extended for a period longer than the actual delay resulting from the Force Majeure event.

E. Notwithstanding the previous Sub-Section, in all disputes under this Section, the MDC shall have the burden of proving, based upon an administrative record, that the United States' and CTDEP's position is arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law. EPA or CTDEP shall maintain the administrative record of the dispute, which shall contain all statements of the Parties, including supporting documentation, submitted pursuant to this Section.

XVI. RIGHT OF ENTRY

A. EPA and CTDEP and their contractors, consultants, and attorneys shall have authority to enter any property and/or facility covered by this Consent Decree at any time, upon proper identification, for the purposes of monitoring the progress of activity required by this Consent Decree, verifying any data or information submitted to EPA and CTDEP under this Consent Decree, and assessing the MDC's compliance with this Consent Decree. This requirement is in addition to, and does not limit, the authority of EPA or CTDEP pursuant to the CWA or any other provision of state or federal law.

XVII. FORM OF NOTICE

A. Submissions required by this Consent Decree shall be made in writing to the following respective addresses, unless written notice is given that another individual has been designated to receive the submissions:

As to the Department of Justice

Bruce Gelber, Chief
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
P.O. Box 7611 - Ben Franklin Station
Washington, D.C. 20044

As to the United States Attorney

Lisa E. Perkins
Assistant United States Attorney
U.S. Attorney's Office
Hartford Office
450 Main Street, Room 328
Hartford, Connecticut 06103

As to EPA

Michael Fedak
Environmental Engineer
Water Technical Unit (SEW)
U.S. Environmental Protection Agency, Region I
One Congress Street
Boston, MA 02114-2023

Jeffrey Kopf
Enforcement Counsel
Office of Environmental Stewardship (SEL)
U.S. Environmental Protection Agency, Region I
One Congress Street
Boston, MA 02114-2023

Reports and plans required to be submitted by the MDC to EPA shall be submitted to Michael Fedak, with a copy of the transmittal letter only to Jeffrey Kopf. The MDC shall provide complete copies to both Mike Fedak and Jeffrey Kopf of all other submissions required to be made by the MDC to EPA pursuant to this Decree.

As to the Connecticut DEP

William Hogan
Connecticut Department of Environmental Protection
Bureau of Water Management
79 Elm Street
Hartford, CT 06106-5127

As to the Connecticut Attorney General

John Looney, Assistant Attorney General
Office of the Attorney General
55 Elm Street
Hartford, CT 06106

Reports and plans required to be submitted by the MDC to CTDEP shall be submitted to William Hogan with a copy of the transmittal letter only to John Looney. The MDC shall provide complete copies to both William Hogan and John Looney of all other submissions required to be made by the MDC to CTDEP pursuant to this Decree.

As to the MDC of Hartford, Connecticut

Charles P. Sheehan, Chief Executive Officer
Metropolitan District of Hartford, Connecticut
555 Main Street
P.O. Box 800
Hartford, CT 06142-0800

B. All written notices, reports or any other submissions required by this Consent

Decree shall contain the following certification by a duly authorized representative of the MDC:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

XVIII. EFFECT OF SETTLEMENT

A. This Consent Decree is neither a permit nor a modification of existing permits under any federal, state, or local law and in no way relieves the MDC of its responsibilities to comply with all applicable federal, state, and local laws and regulations, nor shall it be construed to constitute EPA approval of any equipment or technology installed by the MDC under the terms of this Consent Decree.

B. This Consent Decree does not limit any rights or remedies available to the United States or the State for any violation by the MDC of the CWA and associated regulations or permit conditions other than those civil violations alleged in the Complaints through the Date of Entry. This Consent Decree does not limit any rights or remedies available to the United States or the State for any criminal violations. This Consent Decree does not limit the standing of any person under Section 505 of the CWA to sue for any future violation of the CWA not addressed by this Decree. The United States and the State expressly reserve all rights and remedies, legal and equitable, available to each of them for all violations of the CWA or other applicable law where such violations are not alleged in their respective Complaints, and reserve all rights and remedies, legal and equitable, available to enforce the provisions of this Consent Decree.

Nothing herein shall be construed to limit the power of the United States or Connecticut, consistent with its respective authority, to undertake any action against any person, in response to conditions which may present an imminent and substantial endangerment to the public's health or welfare, or the environment.

C. Neither the United States nor the State, by consent to the entry of this Consent Decree, warrant or aver in any manner that the MDC's compliance with this Consent Decree will result in compliance with the CWA, Connecticut state laws, or any regulations or permits issued thereunder.

XIX. COSTS

A. Each party shall bear its own costs and attorney's fees in this action, except that the MDC shall be responsible for all expenses incurred by the United States in collecting any outstanding penalties due under Sections XII and XIII of this Consent Decree and in enforcing the requirements of this Consent Decree, unless the MDC prevails before a court in any dispute resolution brought pursuant to Section XV (Dispute Resolution). In no event shall the United States or the State be responsible for any expenses, costs or attorney's fees incurred by the MDC.

XX. RETENTION OF JURISDICTION

A. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree and to assess any stipulated penalties that may have accrued during the term of the Decree. This paragraph does not constitute a waiver of the bar to judicial review of administrative decisions, including, but not limited to, approval of plans and other submissions, and permitting decisions.

XXI. MODIFICATION

A. Any material modification to the terms of this Consent Decree shall be by written agreement of the Parties and approval of the Court. Any nonmaterial modifications to the terms of this Consent Decree, such as approval of modifications to submissions to EPA and CTDEP, shall be effective upon approval by EPA and CTDEP.

XXII. CONTINGENT LIABILITY OF THE STATE OF CONNECTICUT

A. This Consent Decree does not resolve the contingent liability of the State of Connecticut under Section 309(e) of the Clean Water Act, 33 U.S.C. § 1319(e). The United States specifically reserves its claims against the State, and the State specifically reserves all defenses to any such claims, including that State law does not prevent the MDC from raising revenues needed to comply with such judgment.

XXIII. FUNDING

A. Performance of the terms of this Consent Decree by the MDC is not conditioned on the receipt of any federal or state grant funds or loans. In addition, performance is not excused by the lack of any federal or state grant funds or loans.

XXIV. SEVERABILITY PROVISION

A. The provisions of this Consent Decree shall be severable, and should any provisions be declared by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect.

XXV. TERMINATION

A. This Decree shall not terminate until the MDC has completed all the remedial measures required by Section VII (CWA Remedial Measures) of the Decree and achieved and

has maintained compliance with all provisions of this Decree for twelve consecutive months.

The Decree shall not terminate thereafter until each of the following occurs:

1. The MDC has demonstrated for one year that Capacity-Related SSOs have been eliminated to EPA's and CTDEP's satisfaction, as provided in Sub-Section IX.A;
2. The MDC has paid all penalties due under this Decree;
3. The MDC has certified in writing to the Court and to the United States compliance with each provision of the Decree; and
4. The MDC and the United States jointly move the Court for termination of the Decree.

XXVI. FINAL JUDGMENT

A. Entry of this Consent Decree constitutes Final Judgment under Rule 54 of the Federal Rules of Civil Procedure.

XXVII. WAIVER OF SERVICE OF SUMMONS AND COMPLAINT

A. The MDC hereby acknowledges receipt of the Complaint and waives service of the summons pursuant to Rule 4 of the Federal Rules of Civil Procedure.

XXVIII. PUBLIC COMMENT

A. This Consent Decree shall be lodged with the Court for a period of not less than 30 days, for public notice and comment in accordance with the provisions of 28 C.F.R. § 50.7. Plaintiffs reserve the right to withdraw or withhold their consent if the comments received disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. Defendant hereby agrees not to withdraw from, oppose entry of, or to challenge any provision of this Consent Decree, unless the United States has notified Defendant

in writing that it no longer supports entry of the Consent Decree.

Judgment is hereby entered in accordance with the foregoing Consent Decree this _____
day of _____.

UNITED STATES DISTRICT JUDGE

United States and State of Connecticut v. The Metropolitan District of Hartford, Connecticut
United States District Court
District of Connecticut
Consent Decree

The following Parties hereby consent to the entry of this Consent Decree:

For Plaintiff UNITED STATES OF AMERICA

Sue Ellen Wooldridge
Assistant Attorney General
Environment & Natural Resources Division
United States Department of Justice

DATE

Henry Friedman
Senior Attorney
Environmental Enforcement Section
Environment & Natural Resources Division
United States Department of Justice
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DATE

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District of Connecticut

Lisa E. Perkins
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DATE

For the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Granta Y. Nakayama
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

DATE

Stephen S. Perkins
Director, Office of Environmental Stewardship
United States Environmental Protection Agency,
Region I
One Congress Street
Boston, MA 02114

DATE

For Plaintiff STATE OF CONNECTICUT
RICHARD BLUMENTHAL
ATTORNEY GENERAL

by _____
John M. Looney
Assistant Attorney General
55 Elm St.
Hartford, CT 06106

DATE

For Defendant, The Metropolitan District of Hartford, CONNECTICUT

Charles P. Sheehan
Chief Executive Officer
The Metropolitan District
555 Main Street
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Hartford, CT 06142-0800

DATE

For Plaintiff STATE OF CONNECTICUT
RICHARD BLUMENTHAL
ATTORNEY GENERAL

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55 Elm St.
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0 — 4-13-06
DATE